

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2018 MAR 14 AM 10:27

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXASBY 9
CLERK

NESANET BELAY,

PLAINTIFF,

V.

CIVIL NO. 1:17-CV-0545-LY

AEGIS WHOLESALE CORPORATION,
AURORA LOAN SERVICES, LLC,
NATIONSTAR MORTGAGE, LLC,
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., AND
VERIPRISE PROCESSING
SOLUTION, LLC,

DEFENDANTS.

**ORDER ON REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

Before the court is the above styled and numbered cause. By order rendered June 8, 2017, the court referred this action for all purposes to the United States Magistrate Judge for disposition of nondispositive matters and a report and recommendation for dispositive matters (Clerk's Document No. 4). *See* 28 U.S.C. § 636(b)(1)(A), (B); Fed. R. Civ. P. 72; Loc. R. W.D. Tex. Appx. C, R. 1(c). By Report and Recommendation of the United States Magistrate Judge signed January 26, 2018 (Clerk's Document No. 19), the magistrate judge recommends that this court grant Defendants Nationstar Mortgage LLC, Veriprise Processing Solution, LLC, Mortgage Electronic Registration Systems, Inc., and Aurora Loan Services, LLC's Motion to Dismiss filed August 16, 2017 (Clerk's Document No. 11). Additionally, the magistrate judge recommends that Belay's Plaintiff's Motion to Disallow Defendants' Motions to Dismiss Pursuant to FRCP 12(b)(6) and Motion to Dismiss for Lack of Jurisdiction, contained within Belay's response to the motion to dismiss (Clerk's Document No. 16) be denied. Also, with regard to Belay's presentment claim, the

magistrate judge finds that Belay alleges this claim against Defendant Aegis Wholesale Corporation (“Aegis”) only, that there is no record that Aegis has been served in this action, and based on Belay’s allegations in the complaint, the presentment claim accrued in 2005, or at the very latest 2011, and is therefore barred by the statute of limitations. Finally, the report and recommendation suggests that this court dismiss with prejudice all claims alleged in Belay’s Plaintiff’s First Amended Complaint as each of Belay’s claims either fails as a matter of law or is time barred.

A party may serve and file specific written objections to the proposed findings and recommendations of a magistrate judge within fourteen days after being served with a copy of the report and recommendation, thereby securing a *de novo* review by the district court. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendations in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

On January 26, 2018, Defendants’ counsel received an emailed copy of the report and recommendation. On January 26, 2018, by United States Postal Service Certified Mail Return Receipt Requested and by United States Postal Service Regular First Class Mail, the clerk of court mailed a copy of the report and recommendation to Belay at the two addresses she provided to the court (Clerk’s Document No. 20). The return receipts for the certified mail and the copies of the report and recommendation mailed by First Class Mail have been returned to the court clerk’s office with notations, “Not Deliverable as Addressed,” “Return to Sender No Such Number Unable to Forward,” or “Return to Sender Not Deliverable As Addressed Unable to Forward.” The court

therefore was unable to calculate a date Belay received the report and recommendation and likewise was unable to calculate a date Belay's objections were due. Additionally, the only contact information Belay provided to the court was the English River Loop address when she filed the action, and the post-office-box address she provided to the court on September 27, 2017, which was the address Belay listed on her response to the motion to dismiss.

Having heard nothing from Belay after a month, on February 28, 2018, the court proceeded to review the entire case file *de novo*, and finding no plain error, accepted and adopted the report and recommendation and, *inter alia*, dismissed all of Belay's claims alleged in this action with prejudice (Clerk's Document No. 24). As nothing remained for the court to resolve, the same day, the court also rendered Final Judgment (Clerk's Document No. 25). As with the report and recommendation, the clerk of court mailed the court's Order on Report and Recommendation and the Final Judgment to Belay by the same means to both addresses Belay had provided to the court. On March 1, 2018, Belay filed Plaintiff's Objections to Report and Recommendation (Clerk's Document No. 26). On March 9, 2018, Defendants Aurora Loan Services, Nationstar Mortgage, Mortgage Electronic Registration Systems, and Veriprise Processing Solution file a Response to Plaintiff's Objections to Report and Recommendation (Clerk's Document No. 28).

By a separate order rendered this day, in the interest of justice the court set aside and vacated the Order on Report and Recommendation and the Final Judgment signed February 28, 2018. The court proceeds now to consider Belay's objections filed March 1, 2018 and Defendants' response.

Having considered the objections, the response, the report and recommendation, and the applicable law, and after reviewing *de novo* the entire case file, the court will overrule the objections, and accept and adopt the report and recommendation for substantially the reasons stated therein.

IT IS ORDERED that Plaintiff *pro se* Nesanet Belay's Plaintiff's Objections to Report and Recommendation filed March 1, 2018 (Clerk's Document No. 26) are **OVERRULED**.

IT IS FURTHER ORDERED that for substantially the reasons stated therein, the Report and Recommendation of the United States Magistrate Judge signed January 26, 2018 (Clerk's Document No. 19) is **ACCEPTED AND ADOPTED**.

IT IS FURTHER ORDERED that Defendants Nationstar Mortgage LLC, Veriprise Processing Solution, LLC, Mortgage Electronic Registration Systems, Inc., and Aurora Loan Services, LLC's Motion to Dismiss filed August 16, 2017 (Clerk's Document No. 11) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff *pro se* Nesanet Belay's Plaintiff's Motion to Disallow Defendants' Motions to Dismiss Pursuant to FRCP 12(b)(6) and Motion to Dismiss for Lack of Jurisdiction, contained within Belay's response to the motion to dismiss (Clerk's Document No. 16) is **DENIED**.

IT IS FURTHER ORDERED that all of Belay's claims alleged in this action are **DISMISSED WITH PREJUDICE**.

SIGNED this 14th day of March, 2018.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE